



STATE OF ARIZONA
ARIZONA STATE LIQUOR BOARD
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DOUGLAS A. DUCEY
Governor

MICHAEL J. TROYAN
Board Chair

JOHN COCCA
Director

Arizona State Liquor Board Hearing Minutes
December 6, 2018

Members Present: Michael J. Troyan – Chair, Troy L. Campbell – Vice Chair, Michael N. Widener, Jeffrey K. Oravits, and Walter W. Jahn

Members Absent: None

Counsel Present: Michael Raine, Assistant Attorney General
John R. Tellier, Licensing & Enforcement Section Chief Counsel, Independent Advisor to the Board

Staff Present: Denise Bale, Board Administrator

A. Call to Order

The hearing of the Arizona State Liquor Board was called to order on December 6, 2018, at 10:00 a.m. with Mr. Troyan presiding.

Roll Call

All members were present.

B. 10:00 a.m. Agenda: Review, consideration and action

Mr. Troyan announced that the order of hearings would be changed. There were no objections.

2. Bar Liquor License No. 06040015 - Appeal of Director's Order

Sara Hardy, Agent
Top Note, LLC
Dba Jammerz
598 N. Broad Street
Globe, AZ 85501

This matter is set for hearing because the Respondent requests that the Board reverse the Director's Order Summarily Suspending Liquor License. Counsel for the Licensee, Peter H. Schelstraete, appeared at the hearing. Assistant Attorney General Michael Raine appeared on behalf of the Department. Licensing & Enforcement Section Chief Counsel John R. Tellier provided independent legal advice to the Board. The Department filed a Motion to Dismiss Appeal. The Director issued an Order Vacating Summary Suspension of Bar Liquor License No. 06040015 issued to Top Note, LLC. Mr. Schelstraete stated the Licensee submitted a request to withdraw its Appeal because it is moot. Mr. Raine stated Licensee's request for withdrawal renders the Department's Motion moot, and there is no objection to withdrawing the Appeal.

Motion to accept application withdrawal -	Widener
Seconded -	Campbell
Yay -	Widener, Campbell, Troyan, Oravits, Jahn
Nay -	None
Abstained -	None
Disposition -	Appeal withdrawal accepted

3. Beer and Wine Store Liquor License, Application No. 26599 - Original Application

Michelle Ivy Valenzuela
 DG Retail, LLC
 Dollar General Store #14192
 1335 W. Ajo Way
 Tucson, AZ 85713

This matter is set for hearing because the City of Tucson recommended disapproval. This matter is also set for hearing because of public protest. Subsequent to this matter being scheduled for hearing an application withdrawal was filed with the Board. The Applicant and its Agent, Michelle Ivy Valenzuela, did not appear at the hearing and were not represented by counsel. Assistant City Attorney Jacinta Figueroa appeared telephonically on behalf of the City of Tucson. Protestor Liberty Partnership Kino Neighborhoods Council and Protestor Southside Neighborhood Association Presidential Partnership did not appear at the hearing and were not represented by counsel.

4. Beer and Wine Store Liquor License, Application No. 26566 - Original Application

Michelle Ivy Valenzuela
 DG Retail, LLC
 Dollar General Store #12582
 945 E. 22nd Street
 Tucson, AZ 85713

This matter is set for hearing because the City of Tucson recommended disapproval. This matter is also set for hearing because of public protest. Subsequent to this matter being scheduled for hearing an application withdrawal was filed with the Board. The Applicant and its Agent, Michelle Ivy Valenzuela, did not appear at the hearing and were not represented by counsel. Assistant City Attorney Jacinta Figueroa appeared telephonically on behalf of the City of Tucson. Protestor Liberty Partnership Kino Neighborhoods Council and Protestor Southside Neighborhood Association Presidential Partnership did not appear at the hearing and were not represented by counsel.

5. Beer and Wine Store Liquor License, Application No. 26598 - Original Application

Michelle Ivy Valenzuela
 DG Retail, LLC
 Dollar General Store #13199
 5663 S. 12th Avenue
 Tucson, AZ 85706

This matter is set for hearing because the City of Tucson recommended disapproval. This matter is also set for hearing because of public protest. Subsequent to this matter being scheduled for hearing an application withdrawal was filed with the Board. The Applicant and its Agent, Michelle Ivy Valenzuela, did not appear at the hearing and were not represented by counsel. Assistant City Attorney Jacinta Figueroa appeared telephonically on behalf of the City of Tucson. Protestor Liberty Partnership Kino

Neighborhoods Council, Protestor Sunnyside Neighborhood Association, and Protestor Southside Neighborhood Association Presidential Partnership did not appear at the hearing and were not represented by counsel.

Ms. Figueroa addressed the Board and stated that the City of Tucson does not object to the application withdrawal of the three Dollar General Stores on the agenda.

Motion to accept application withdrawal of
Beer and Wine Store Liquor License

Nos. 26599, 26566 and 26598 -

Seconded -

Yay -

Nay -

Abstained -

Disposition -

Campbell

Widener

Campbell, Widener, Troyan, Jahn, Oravits

None

None

Application withdrawal for agenda items 3, 4, and 5 accepted

1. Bar Liquor License No. 06070159 - Request for Rehearing or Review

Frank Mario Zanzucchi, Jr., Agent

4716, Inc., dba Hi-Liter Gentleman's Club

4716 N. 12th Street

Phoenix, AZ 85014

Laurence Dellheim, Lienholder

4716, Inc., dba Hi-Liter Gentleman's Club

4716 N. 12th Street

Phoenix, AZ 85014

This matter is set to consider the Licensee's request for rehearing filed with the Board. This matter is also set to consider the Lienholder's request for rehearing filed with the Board. The Board voted to affirm the Director's Decision and Order in Complaint number 17A-0004-LIQ issued June 11, 2018, after a hearing at its Board meeting on September 6, 2018. The Licensee, through its counsel Jocquese L. Blackwell, and Counsel Pro Hac Vice, J. Michael Murray, timely filed a Motion for Rehearing. The Department of Liquor Licenses and Control (Department), through its counsel Michael Raine, filed a Response to 4716, Inc.'s Request for Rehearing. The Licensee filed a Reply in Support of its Motion for Rehearing. The Lienholder Laurence Dellheim, through his counsel Harvey M. Yee, timely filed a Motion for Rehearing. The Department, through its counsel Michael Raine, filed a Response to Lienholder Dellheim's Request for Rehearing. The Lienholder filed a Reply to Response. Mr. Tellier provided independent legal advice to the Board.

Mr. Murray argued that the charges based on dancer misconduct that occurred on March 17, 2016, should have been dismissed and evidence of those violations should have been excluded as a result of the consent decree entered into by the Licensee and the Director. On July 1, 2016, the Licensee and the Director entered into a Consent Agreement to resolve claims that violations of R19-1-309 had taken place in August 2015. Mr. Murray argued that introducing the charged violations tainted the entire proceeding, and a reversal and remand for a new hearing is required. In addition, bringing the charges based on events that were barred by the Consent Agreement also deprived the Licensee of its right to due process. Mr. Murray stated that rehearing should be granted because the March 2016 violations were critical to the ALJ's recommendation, adopted by the Director, to revoke the Hi-Liter's license. Mr. Murray argued the Licensee demonstrated that A.R.S. § 4-202(C), § 4-119, and A.A.C. R19-1-302 were not violated. In addition, Mr. Murray questioned whether the Sunshine Law was violated in the Board's hearing and whether the Board misconstrued the meaning of R19-1-309.

Mr. Raine argued that the consent agreement expressly applied to only the August 2015 violations. There was no formal allegation regarding the March 2016 undercover operation visit until the State issued its Complaint and Notice of Hearing on October 2, 2017. Mr. Raine stated that the language in the consent agreement supports the Department's interpretation that it did not intend to resolve a pending investigation that the Licensee was unaware of, which resulted in numerous serious charges that were not

brought until a year and a half after the consent agreement. Mr. Raine argued that the record does not support Hi-Liter's claim that it thought the consent agreement resolved the March 2016 violations. He added, the Department's complaint in this case clearly referenced the March 2016 violations and the prior consent agreement, putting Hi-Liter on notice that the Department did not consider the March events resolved. Mr. Raine argued that having the March 2016 facts addressed at the hearing was not prejudicial to Hi-Liter and did not materially affect its rights under A.A.C. R19-1-703(C). Mr. Raine countered the arguments presented that Hi-Liter was "materially prejudiced" under Rule 703(C). Mr. Raine concluded that the penalty was appropriate.

The Board recessed from 11:07 a.m. to 11:17 a.m.

Mr. Widener and Mr. Oravits had questions for Mr. Raine and Mr. Murray. Mr. Campbell stated for the record that Board members did not violate Open Meeting Law as Mr. Murray alleged.

Motion to deny request for rehearing or reconsideration -	Oravits
Seconded -	Campbell
Yay -	Oravits, Campbell, Troyan, Widener, Jahn
Nay -	None
Abstained -	None
Disposition -	Motion for rehearing or reconsideration denied

Mr. Yee argued that the ALJ, the Director and the Board do not understand the lienholder's position, and the only remedy is to send the matter back to the ALJ and have a full examination of the lienholder's position. Mr. Raine presented the Department's response. There was discussion between Mr. Yee and Mr. Widener. There were questions from the Board for Mr. Yee.

Motion to deny request for reconsideration or rehearing -	Campbell
Seconded -	Jahn
Yay -	Campbell, Jahn, Troyan, Widener, Oravits
Nay -	None
Abstained -	None
Disposition -	Motion for reconsideration or rehearing denied

The Board recessed from 12:36 p.m. to 12:45 p.m.

6. Beer and Wine Bar Liquor License, Application No. 26002 - Original Application

Maria I. Teran, Agent
El Sinaloa Cafe & Bar
432 E. Michigan
Tucson, AZ 85714

This matter is set for hearing because of public protest. The Applicant and Agent, Maria I. Teran, appeared at the hearing and was not represented by counsel. Claudia Teran was present to interpret for the Applicant. Protestors Jerry Dean Kirchner, Dorothy Lucero and Marcos Lucero were not present and were not represented by counsel. There were questions from the Board.

Mr. Widener made a motion: In the matter of El Sinaloa Café and Bar, I move that the Board approve Application Number 26002. I do note the existence of public protests, but if memory serves me correctly the Tucson City Council actually recommended approval for this license, so apparently the folks in both jurisdictions didn't think this was an excessive reason for opposition. And I would point out that this cafe has a long history in that part of Tucson and is a somewhat consequential part of the community.

Motion to grant license -	Widener
Seconded -	Jahn
Yay -	Widener, Jahn, Troyan, Oravits
Nay -	Campbell
Abstained -	None
Disposition -	License granted

7. Bar Liquor License No.06040027 – Person Transfer Application

Ross Lee Tucker, Agent
Black Breeze, LLC
Pour House Bar & Grill
3870 E. Highway 260
Star Valley, AZ 85541

This matter is set for hearing because the Town of Star Valley recommended disapproval. The Applicant, Black Breeze, LLC, and its Agent, Ross Lee Tucker, did not appear at the hearing and were not represented by counsel. The Town of Star Valley did not appear at the hearing and was not represented by counsel.

Mr. Oravits made a motion to deny the application based on Star Valley recommended disapproval and the Applicant failed to appear and did not meet its burden of proof.

Motion to deny license -	Oravits
Seconded -	Jahn
Yay -	Oravits, Jahn, Troyan, Campbell, Widener
Nay -	None
Abstained -	None
Disposition -	License denied

C. Minutes: Review, consideration and action

- August 2, 2018, General Session and Executive Session
- September 6, 2018, General Session and Executive Session
- October 4, 2018, General Session and Executive Session

Motion to accept minutes of August 2, September 6, and October 4, 2018 -	Campbell
Seconded -	Oravits
Yay -	Campbell, Oravits, Troyan, Jahn
Nay -	None
Abstained -	Widener
Disposition -	Minutes approved

D. 2019 Hearing Schedule: Review, consideration and action

Motion to approve 2019 Hearing Schedule -	Campbell
Seconded -	Jahn
Yay -	Campbell, Jahn, Troyan, Oravits
Nay -	None
Abstained -	Widener
Disposition -	2019 Hearing Schedule approved


E. Reports on Current Events, Matters of Board Procedure, Requests and Items for Future Agenda

The next meeting will be January 10, 2019.

F. Call to the Public

None.

The Board adjourned at 1:08 p.m.



Denise M. Bale
Administrator of the
Arizona State Liquor Board



Date